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10 Attorneys for Chapter 11 Trustee

11
12 IN THE UNITED STATES BANKRUPTCY COURT
13 FOR THE DISTRICT OF OREGON

14 In re) Case No. 08-37031-rld11
15 Summit Accommodators, Inc., dba Summit)
1031 Exchange,)
16 Debtor.)

17 **KEVIN D. PADRICK, CHAPTER 11**) Adv. Pro. No. -09-3086-rld
18 **TRUSTEE,**)

19 Plaintiff,) **COMPLAINT**

20 v.)

21 **MARK A. NEUMAN; BRIAN STEVENS;**) (Breach of Fiduciary Duty; Conversion;
22 **LANE D. LYONS; and TIMOTHY**) Professional Negligence; Civil
23 **LARKIN,**) Conspiracy; Aiding and Abetting;
24) Implied in Law Contract; Constructive
25) Trust; Accounting; Injunctive Relief)
26)

Defendants.)

Kevin D. Padrick, Chapter 11 Trustee, alleges as follows:

PARTIES

1. Kevin D. Padrick is the duly-appointed Chapter 11 Trustee ("Trustee") in the above-captioned bankruptcy proceeding.

2. Summit Accommodators, Inc. is the Debtor ("Debtor") in the above-captioned bankruptcy proceeding.

3. Defendant Lane D. Lyons ("Lyons") is an individual residing in Oregon and at all material times was an officer, agent and shareholder of Debtor.

4. Defendant Timothy Larkin ("Larkin") is an individual residing in Oregon and at all material times was an officer, agent and shareholder of Debtor.

5. Defendant Mark Neuman ("Neuman") is an individual residing in Oregon and at all material times was an officer, agent and shareholder of Debtor. Defendant Neuman was also a certified public accountant, licensed in the State of Oregon.

6. Defendant Brian Stevens ("Stevens") is an individual residing in Oregon and at all material times was an officer, agent and shareholder of Debtor. Defendant Stevens was also a certified public accountant, licensed in the State of Oregon.

7. Inland Capital Corp. ("Inland") is an Oregon corporation, which at all material times was owned and controlled by the Defendants.

8. Three Sisters Development Co., Inc. ("Three Sisters") is an Oregon corporation, which at all material times was owned and controlled by the Defendants.

JURISDICTION AND VENUE

9. Jurisdiction in this adversary proceeding arises pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 157(b).

10. Venue is proper in this District pursuant to 28 U.S.C. § 1409(a). This is a core proceeding under 28 U.S.C. § 157(b)(2).

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14. Some or all of the Defendants also continued to induce Exchange Creditors to deposit funds into accounts controlled by Debtor, during a time period in which the exchange account balances were insufficient to cover the amounts owing on the current 1031 exchanges that Debtor was handling. As a result, money received from new Exchange Creditors, during this time, was being used to fund other 1031 exchanges.

(Breach of Fiduciary Duty Owing to Exchange Creditors - Against All Defendants)

16. Defendants owe and owed fiduciary duties to the Exchange Creditors, including the duties of undivided loyalty, honesty and due care.

1 17. Some or all of the Defendants breached their fiduciary duties to the
2 Exchange Creditors by using and diverting the Exchange Funds for the personal benefit of
3 some or all of the Defendants, including by transferring and/or lending the Exchange Funds
4 to Inland and by causing Inland to transfer and/or loan money to some or all of the
5 Defendants and other related entities and persons. Any Defendants that did not breach the
6 fiduciary duties they owe and owed to the Exchange Creditors in the manner described in the
7 preceding sentence, breached their fiduciary duties to the Exchange Creditors by failing to
8 exercise due care to discover and discontinue the diversion of Exchange Funds for the
9 personal benefit of some or all of the Defendants.

10 18. The Defendants' breaches of their fiduciary duties caused substantial
11 damage to the Exchange Creditors, in an amount exceeding \$13 million.

12 **SECOND CLAIM FOR RELIEF**

13 **(Breach of Fiduciary Duty Owing to Debtor - Against All Defendants)**

14 19. Trustee realleges all preceding paragraphs.

15 20. Defendants owed fiduciary duties to Debtor in their capacity as
16 Debtor's officers, employees and/or agents, including the duties of undivided loyalty, honesty
17 and due care.

18 21. Some or all of the Defendants breached their fiduciary duties to Debtor
19 by using and/or diverting funds belonging to Debtor and/or Debtor's clients for the personal
20 benefit of some or all of the Defendants. Any Defendants that did not breach the fiduciary
21 duties they owed to Debtor in the manner described in the preceding sentence, breached their
22 fiduciary duties to the Debtor by failing to exercise due care to discover and discontinue the
23 diversion of funds belonging to Debtor or Debtor's clients for the personal benefit of some or
24 all of the Defendants.

25 22. Defendants' conduct has damaged Debtor in an amount exceeding \$13
26 million.

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1 31. Each of the Defendants knew or had reason to know that the other
2 Defendants' conduct as alleged above was tortious.

3 32. Defendants' tortious conduct was pursuant to a plan or agreement
4 among all of them. Moreover, each of the Defendants encouraged and substantially assisted
5 the other Defendants in their tortious conduct.

6 33. Defendants are jointly and severally liable for all other Defendants'
7 tortious conduct, in an amount exceeding \$13 million.

8 **SIXTH CLAIM FOR RELIEF**

9 **(Implied-in-Law Contract with Exchange Creditors – Against All Defendants)**

10 34. Trustee realleges all preceding paragraphs.

11 35. The Exchange Creditors conferred a benefit on the Defendants, in the
12 form of depositing the Exchange Funds in accounts controlled by Debtor that were ultimately
13 transferred and/or loaned for the personal benefit or use of some or all of the Defendants.

14 36. Defendants were aware of the benefit conferred on them by the
15 Exchange Creditors.

16 37. It would be unjust to allow Defendants to retain the benefit conferred
17 on them by the Exchange Creditors.

18 **SEVENTH CLAIM FOR RELIEF**

19 **(Implied-in-Law Contract with Debtor – Against All Defendants)**

20 38. Trustee realleges all preceding paragraphs.

21 39. The Debtor conferred a benefit on the Defendants, in the form of the
22 transfer and/or loan of funds to Inland that were ultimately transferred and/or loaned for the
23 personal benefit or use of some or all of the Defendants.

24 40. Defendants were aware of the benefit conferred on them by the
25 Debtor.

26 * * * * *

1 41. It would be unjust to allow Defendants to retain the benefit conferred
2 on them by Debtor.

3 **EIGHTH CLAIM FOR RELIEF**

4 **(Constructive Trust/Accounting – Against All Defendants)**

5 42. Trustee realleges all preceding paragraphs.

6 43. Trustee is entitled to a declaration that the Defendants hold the
7 Exchange Funds, as well as any other money and/or assets held or controlled by the
8 Defendants, in constructive trust for the benefit of the Exchange Creditors and Debtor.

9 44. Trustee is also entitled to an order temporarily, preliminarily and
10 permanently enjoining Defendants from transferring or otherwise using Exchange Funds and
11 any other money or assets in Defendants' possession or control, and for the remedy of
12 prejudgment attachment.

13 45. Trustee is further entitled to an accounting from Defendants of all
14 transactions involving, using or traceable to any Exchange Funds or other funds from Debtor.

15 WHEREFORE, Trustee prays for judgment against the Defendants as
16 follows:

17 A. Finding in favor of Trustee on all of the claims for relief;

18 B. Awarding damages against the Defendants in an amount exceeding
19 \$13 million;

20 C. Declaring that Defendants hold the Exchange Funds, as well as any
21 other money and/or assets held or controlled by the Defendants, in constructive trust for the
22 benefit of the Exchange Creditors and Debtor;

23 D. Requiring Defendants to provide an accounting of all transactions
24 involving, using or traceable to any Exchange Funds or any other funds diverted from
25 Debtor;

26 * * * * *

1 E. Temporarily, preliminarily and permanently enjoining Defendants
2 from transferring or otherwise using Exchange Funds and other money or assets in
3 Defendants' possession or control, and ordering the remedy of prejudgment attachment;

4 F. Awarding costs and disbursements to the Trustee; and,

5 G. Granting such other and further relief as the Court deems just and/or
6 equitable.

7 DATED this 13th day of March, 2009.

8 TONKON TORP LLP

9
10 By /s/ Leon Simson

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